

RECEIPT # 62677
 AMOUNT \$ 5.00
 SUMMONS ISSUED N
 LOCAL RULE 4.1
 WAIVER FORM
 MCF ISSUED
 BY DPTY. CLK. cmk
 DATE 3-11-05

05 ^{CV} 10467 RWZ

FILED
 UNITED STATES DISTRICT COURT CLERKS OFFICE
 DISTRICT OF MASSACHUSETTS

2005 MAR 11 A 11:20

MATTER OF:
 VERDIEU BERNARD,
 PETITIONER

U.S. DISTRICT COURT
 DISTRICT OF MASS.
 MAGISTRATE JUDGE Dein

PETITIONER'S MOTION FOR HABEAS CORPUS PURSUANT TO 8 U.S.C.
 SECTION 2241, MOTION FOR STAY OF REMOVAL FROM UNITED STATES OF
 AMERICA

Now comes the petitioner, Verdieu Bernard, and hereby moves this Honorable Court for habeas corpus pursuant to 8 U.S.C. Section 2241 and for a stay of his removal from the United States of America.

PROCEDURAL HISTORY

Vedieu Bernard is a Haitian citizen, who has resided in the United States of America since May, 2001. He came to the United States to escape political persecution at the hands of supporters of Jean Bertrand-Aristide. Bernard was involved in a political group known as Convergence, its views being opposed to Aristide. Bernard's role was helping Convergence print newspapers and filers.

Bernard originally settled in Miami, and then moved to Boston in December, 2002. Bernard's mother, Meliane LaFortune was shot in October, 2004 and, due to the shooting, is at least partially paralyzed and is in a wheelchair. Bernard believes very strongly that the Chimer Group, a group affiliated with Aristide, was responsible for the attempt on his mother's life. It should also be mentioned that Bernard's brother, Joanis LaFortune, was murdered in Haiti after Bernard fled to the United States, although it is still unclear who was responsible. An asylum petition was filed on Bernard's behalf. The asylum petition was denied at the Immigration Court level, and then denied on appeal. A motion to re-open the Board of Immigration Appeal's decision was denied, as well.

At his time, we assert that all I.N.S. remedies available to the petitioner have been exhausted and we are seeking habeas corpus pursuant to 8 U.S.C. Section 2241 as well as a stay of removal. We assert that Section 2241 gives this Honorable Court the authority and jurisdiction to grant habeas corpus to the petitioner for the purpose of having this matter heard on the merits. We also assert that a stay should be granted, as petitioner satisfies the four pronged standard established in AREVALO v. ASHCROFT, 394 F. 3d 1 (1st Cir. 2003).

That standard is as follows:

I. IS THE PETITIONER LIKELY TO SUCCEED ON THE MERITS OF HIS UNDERLYING OBJECTION?

Throughout this matter, at both the DHS and now the District Court level, petitioner has argued that his removal from the United States should be ~~be~~^{cancelled as} he is eligible for asylum. Asylum was denied to petitioner on September 9, 2004. The shooting of his mother was in October of 2004. The percuriam order of the Board of Immigration Appeals unfairly, in our opinion, chastises petitioner for not referencing the 2001 death of his brother during his April 1, 2002. That was due to the lack of any evidence connecting his brother's death to any political motive. Certainly, the attempt on petitioner's mother's life is a changed circumstance. The percuriam order also refers to a proffered medical record attributing Mrs. LaFortune's injuries to a fall. That medical record was either incorrectly translated or unrelated to the shooting. Attached to this motion is a medical record that does indicate that Mrs. LaFortune was indeed^{shot} and the fact that the shooting was politically motivated is supported by the statements of Mrs. LaFortune as contained in the translation.

II. WILL THE PETITIONER SUFFER IRREPRABLE HARM ABSENT THE STAY?

We assert that, absent the stay, petitioner will be physically re-located to Haiti, the very country he fled to avoid political persecution.

III. DOES THE HARM OUTWEIGH ANY POTENTIAL HARM FAIRLY ATTRIBUTABLE TO THE GRANTING OF THE STAY?

Verdieu Bernard has no criminal record and there is no actual or potential harm that would accrue to our country or any of its citizens if the stay is granted.

IV. WOULD THE STAY DISSERVE THE PUBLIC INTEREST?

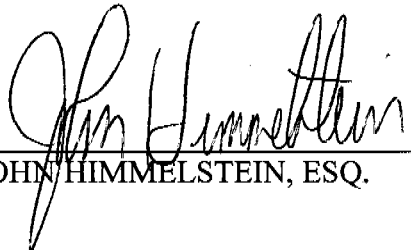
The stay would not disserve the public interest for the same reason that were stated in the response to Prong Number Three, above. For these reasons, a stay should be granted, Verdieu Bernard should not be removed from the United States and we would assert that this entire removal proceeding be dismissed with Verdieu Bernard being allowed to stay in the United States.

CERTIFICATE OF SERVICE

FILED
IN CLERKS OFFICE

2005 MAR 11 A 11:20

Undersigned counsel hereby certifies that he has served the enclosed motion/documents on the Department of Homeland Security by mailing copies of same, postage prepaid, to John F. Kennedy Federal Building, Government Center, Boston, MA 02108 on March 11, 2005.



JOHN HIMMELSTEIN, ESQ.

GENERAL BUSINESS COMPANY

Department of Foreign Language Translation

FILED
CLERKS OFFICE

LIBERTY

EMBLEM
REPUBLIC OF HAITI
EQUALITY

2005 MAR 11 A 11:20
FRATERNITY
U.S. DISTRICT COURT
DISTRICT OF MASS.

IN THE NAME OF THE REPUBLIC

ONE SEAL

Extract from the Minutes of the Clerk Office of the Court of Peace of the Southern District of Port-au-Prince.

IN THE NAME OF THE REPUBLIC

In the Year Two Thousand Four and on Monday Twenty-Fifth day of the month of October, 201st Year of the Independence, at one hour thirty minutes in the afternoon, We, BERGE O. SURPRIS, Esq. Justice of the Peace of the Southern District of Port-au-Prince, with the assistance of our Clerk, Mrs. MARIE IRLENE FINEUS, upon the verbal request of Mrs. VERDIEU BERNARD, spouse born DARLENE DESIR, IDENTIFIED by No 003-199-636-8, residing and domiciled in Port-au-Prince, "Rue des Cesars No 126, Bel-Air", at the effect to take ourselves to the State University Hospital of Haiti in order to notice the condition of mother of his spouse in this case Mrs. Meliane LAFORTUNE who has received many bullets at her left leg and her right arm.

Referring to this request, accompanied by the claimant, we take ourselves to the place, where arrived, the claimant introduced us in the orthopedic room where the victim is hospitalized, from there being, we have seen and noticed, laid down on bed, a lady named Meliane LAFORTUNE, known by the name of Anna LAFORTUNE, in the room being, we have noticed a bandage at the right arm and at the left leg, at the left hip, appliances, we have also noticed a HV at the left arm, her left wrist is broken.

Our official material report finished, we have obtained from the victim the following declaration:

The Honor, on Wednesday, October 6 of the current year, individuals, armed sticks, machetes and fired arms; they asked me this question: where is VERDIEU, my son? Having not found my son, they open fire on me and I received a bullet at the left leg and another at the right arm. The Honor, I have to tell you they were a dozen, I can identify five of them who had altercation with my son Verdieu BERNARD who lives in the United States. Those five I know them, they lived in the neighborhood. When I will be released from the hospital, I do not know where to go, because they came with the idea to kill me, Thank God, the wife and the children of my son were not present this day, because again they came with the intention to kill us.

The Honor, according them, Verdieu was a member of the "Convergence Party". Why, The Honor, I have requested the judicial Apparatus for the legal actions.

Requested to sign her declaration, she did not for not to be able.

From that, we have drawn-up and closed this present official report that we have after lecture signed with our clerk and the claimant.

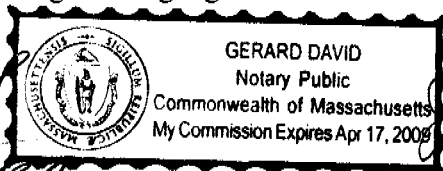
So signed: Berge O. SURPRIS, Justice of the Peace, Mrs. Marie Irlene FINEUS, Clerk

CERTIFIED TRUE COPY

COLLATED

SIGNED AND SEALED BY: The Clerk.

I, undersigned, Jean Eddy Mathurin, Translator of General Business Company, certify that I am competent in both French and English languages to translate the French document into English this 22nd day of November 2004.



Jean Eddy Mathurin
JEAN EDDY MATHURIN



REPUBLIQUE D'HAÏTI

LIBERTE

EGALITE

AU NOM DE LA REPUBLIQUE

FILED
IN CLERKS OFFICE

2005 MAR 11 A 11:20

U.S. DISTRICT COURT
DISTRICT OF MASS.
FRATERNITE

Extrait des minutes du greffe du Tribunal de Paix de la
Section Sud de Port-au-Prince.-

AU NOM DE LA REPUBLIQUE

L'an deux mille quatre et le lundi vingt cinquième jour du mois
d'Octobre, An 20ème de l'Indépendance, à une heure trente minutes de
l'après-midi.

Nous, Me. BERGE O. SURPRIE, Juge de Paix de la Section Sud de Port-
au-Prince, assisté de notre greffier Madame MARIE IRLÈNE FINEUS.

Sur la réquisition verbale de la dame VERDIEU BERNARD, l'épouse née
MARLENE DESIR, identifiée au No: 003-199-636-8, demeurant et domiciliée
à Port-au-Prince Rue des Césars No. 121 Bel-Air, à l'effet de nous trans-
porter à l'Hôpital de l'Université d'Etat d'Haïti aux fins de constater
l'état de la mère de son époux en l'occurrence la dame Méliane LAFORTUNE
laquelle a été atteint de plusieurs cartouches au niveau de son pied gau-
che et son bras droit.

Déférant à cette réquisition, accompagné de la requérante, nous sommes
transporté sur les lieux, où arrivé, la requérante nous a introduit à l'in-
térieur de la Salle d'Orthopédie où est hospitalisée la victime, delà étant
avons vu et constaté couchée sur un lit une dame répondant au nom de Méliane
LAFORTUNE connue sur le nom de Anna LAFORTUNE de l'intérieur étant avons
constaté, un bandage au bras droit et au pied gauche, dans sa hanche gauche,
un appareil avons constaté également un sérum au bras gauche, son poignet
gauche est cassé.

Notre constat matériel terminé, avons recueilli la déclaration de la
victime ainsi qu'il suit:

Magistrat, le mercredi 6 Octobre de l'année en cours des individus
ont investi l'enceinte de ma maison, ils sont armés de bâton, de machettes
et d'arme-à-feu, ils m'ont posé des questions en me disant, où est VERDIEU
mon fils, n'ayant pas trouvé mon fils, ils ont ouvert le feu sur moi où
j'ai reçu des cartouches l'une à la jambe gauche et l'autre au bras droit.
Magistrat, je tiens à vous signaler qu'ils étaient au nombre de douze, je peux
identifier cinq d'entre eux qui avaient une altercation avec mon fils verdieu
BERNARD qui se trouve aux États-Unis; ces cinq là je les connais, ils sont
du quartier après mon sorti à l'Hôpital je ne sais pas où aller, parce qu'ils
étaient venus avec toutes leurs dispositions pour me tuer. Dieu soit loué
l'épouse et les enfants de mon fils n'étaient pas présent ce jour là parce
qu'ils étaient venus pour nous tuer.

Magistrat, selon eux VERDIEU était membre de la Convergence. Pourquoi,
Magistrat, j'ai requis l'appareil judiciaire pour les suites légales.

Requise de signer sa déclaration, elle ne l'a pas fait pour
ne le savoir.-/.....

De tout quoi, avons dressé et clos ce présent procès-verbal de constat que nous avons après lecture signé avec notre greffier et la requérante.

Ainsi signé: Me. Berge O. SURPIS, Juge de Paix, Mme. Marie Irlène FINEUS, greffier.

POUR EXPEDITION CONFORME
COLLATIONNEE.


LE GREFFIER.-

050910467RWZ

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

IN CLERKS OFFICE

I. (a) PLAINTIFFS

VERDIEU BERNARD

(b) County of Residence of First Listed Plaintiff

SUFFOLK

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

JOHN HIMMELSTEIN (617) 868-2533
929 MASSACHUSETTS AVE., SUITE 01 CAMBRIDGE 02139

DEFENDANTS

DEPARTMENT OF HOMELAND SECURITY
MAR 11 AT 11:20

County of Residence of First Listed Defendant

SUFFOLK

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff☐ 3 Federal Question (U.S. Government Not a Party)☒ 2 U.S. Government Defendant☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State PTF ☐ 1 DEF ☒ 1

Incorporated or Principal Place of Business In This State

PTF ☐ 4 DEF ☐ 4

Citizen of Another State

☐ 2 ☐ 2

Incorporated and Principal Place of Business In Another State

☐ 5 ☐ 5

Citizen or Subject of a Foreign Country

☒ 3 ☐ 3

Foreign Nation

☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

8 U.S.C. SECTION 2241

Brief description of cause:

ATTEMPT TO SEIZ DEPORTATION OF NON-U.S. CITIZEN

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

3/11/05

SIGNATURE OF ATTORNEY OF RECORD

John Himmelstein

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

05 **10467RWZ**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) BERNARD V. DHS
2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).
- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. **Also complete AO-120 or AO-121 for patent, trademark or copyright cases*
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.
3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.
4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?
- YES ☐ NO ☒
5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)
- YES ☐ NO ☒
- IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?
- YES ☐ NO ☐
6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?
- YES ☐ NO ☒
7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).
- YES ☒ NO ☐
- A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?
- EASTERN DIVISION ☒ CENTRAL DIVISION ☐ WESTERN DIVISION ☐
- B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?
- EASTERN DIVISION ☐ CENTRAL DIVISION ☐ WESTERN DIVISION ☐
- (PLEASE TYPE OR PRINT)
- ATTORNEY'S NAME JOHN HIMMELSTEIN
- ADDRESS 929 MASSACHUSETTS AVENUE, SUITE 01, CAMBRIDGE 02139
- TELEPHONE NO. (617) 868-2533